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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

SHERYL CLARK, Individually, as Successor-in-  
Interest to Delaine Stowell, on Behalf of the Estate  
of Delaine Stowell, and on Behalf of the Class,

Plaintiff,

vs.

TRANSAMERICA LIFE INSURANCE  
COMPANY, an Iowa Corporation,

Defendant.

Case No. 2:20-cv-00539-JAM-DB

(Hon. John A. Mendez)

**DEFENDANT TRANSAMERICA  
LIFE INSURANCE COMPANY'S  
NOTICE OF MOTION AND MOTION  
TO DISMISS PLAINTIFF SHERYL  
CLARK'S FIRST AMENDED  
COMPLAINT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT**

Hearing Date: August 11, 2020

Hearing Time: 1:30 p.m.

Courtroom: 6

[Filed concurrently with (i) Declaration of  
Darlene Edwards; (ii) Declaration of  
Elizabeth Smith; (iii) Declaration of  
Heather Thomas; (iv) Request for Judicial  
Notice; and (v) [Proposed] Order]

Complaint Filed: March 10, 2020

Trial Date: Not Set

1                   **TO THE COURT, TO PLAINTIFF AND TO HIS ATTORNEYS OF RECORD:**

2                   **PLEASE TAKE NOTICE** that on August 11, 2020, at 1:30 p.m. or as soon thereafter as the  
3 matter be heard in Courtroom 6, 14<sup>th</sup> Floor of the above-entitled court, located at the Robert T. Matsui  
4 United States Courthouse, 501 I Street, Sacramento, California 95814, Defendant Transamerica Life  
5 Insurance Company (“TLIC”) will move the Court to dismiss the action filed pursuant to Federal  
6 Rules of Civil Procedure, Rule 12(b)(6).

7                   The named Plaintiff Sheryl Clark’s (“Plaintiff”) First Amended Complaint fails in its entirety  
8 and should be dismissed with prejudice because the statutes she relies upon to support her claims,  
9 California Insurance Code sections 10113.71 and 10113.72, do not apply as a matter of law to the  
10 group life insurance policy under which Plaintiff seeks coverage.

11                  TLIC’s Motion is based on this Notice of Motion and Motion, the attached Memorandum of  
12 Points and Authorities, the accompanying Declarations of Darlene Edwards, Elizabeth Smith and  
13 Heather Thomas, the accompanying Request for Judicial Notice, all other matters of which judicial  
14 notice may be taken, and such oral argument as the Court may permit at the hearing on this Motion.

15                  The Parties met and conferred as required by the Court’s standing order and were unable to  
16 come to any agreement regarding the issues raised herein. This Motion is made following the  
17 conference of counsel pursuant to the Court’s standing order which took place on June 12, 2020.

18  
19 DATED: June 19, 2020

HINSHAW & CULBERTSON LLP

20  
21 By: /s/ Vivian I. Orlando

22 Larry M. Golub  
23 Vivian I. Orlando  
24 Attorneys for Defendant  
25 TRANSAMERICA LIFE INSURANCE  
26 COMPANY  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Desperate to save her claims despite the fact that the statutes she relies upon do not apply to  
4 the group policy at issue, Plaintiff Sheryl Clark's ("Plaintiff") First Amended Complaint ("FAC")  
5 adds largely repetitive allegations which do nothing to solve the fundamental problems with her  
6 lawsuit. Her purported class action continues to rely upon the alleged violations of California  
7 Insurance Code sections 10113.71 and 10113.72 ("the Statutes"). The Statutes, however, only apply  
8 to life insurance policies *issued or delivered in California* and, with one exception inapplicable to  
9 the facts of this case, to *individual* life insurance policies. The unassailable problem with Plaintiff's  
10 lawsuit is that the life insurance coverage under which the named Plaintiff seeks coverage and claims  
11 to have incurred a violation of the Statutes was a *group life insurance policy* – not an individual life  
12 insurance policy – and that group policy was *not issued or delivered in California*. Plaintiff's  
13 overreaching attempt to fit the group policy within the scope of the Statutes is totally misguided and  
14 her tortured allegations seeking to present a viable claim are nonsensical. Simply put, Plaintiff  
15 possesses no claims under the Statutes and this lawsuit should be dismissed with prejudice.

16 **II. MATERIAL ALLEGED FACTS**<sup>1</sup>

17 For the most part, Plaintiff's FAC merely regurgitates the allegations in the initial complaint,  
18 and add the terms "group" and "certificate" throughout without thought or coherent analysis of what  
19 the Statutes actually say. Plaintiff also argues that a certificate holder is the policy owner, that  
20 Plaintiff's mother, Delaine Stowell ("Stowell"), was a person with an interest in the group policy, and  
21 that a certificate is equivalent to a group policy or an individual policy. *E.g.*, FAC, ¶¶23, 25, 39, 42.  
22 But these disjointed and incoherent arguments demonstrate a lack of understanding of how group  
23 coverage operates and must be rejected under the plain language of the Statutes, as well as the actual  
24 Legislative History that TLIC has provided. In effect, Plaintiff seeks to apply the Statutes in full to  
25 both group and individual policies irrespective of issuance or delivery, and effectively eliminate any  
26 distinction between the two. This is completely improper and such efforts must be rejected.

27 The only really new and fabricated claim is that Transamerica Life Insurance Company

28 <sup>1</sup> For this motion only, TLIC recites Plaintiff's allegations without admitting their truth.

1 (“TLIC”) somehow engaged in intentional fraud by providing a longer grace period than the  
2 certificate or group policy required to pay premiums. *See, e.g.*, FAC, ¶10. This new theory is  
3 fundamentally flawed because, among other things, it is dependent on the Statutes that do not apply  
4 to the group policy at issue here and also is contradicted by the notices sent to Plaintiff’s mother that  
5 shows that she was provided with more than a 60-day period to pay her premium. TLIC cannot be  
6 held liable for breach of contract or unfair competition based on intentional fraud for claimed  
7 obligations here that are neither stated in the policy nor required by law, and the fact is that Stowell  
8 had been given a 60-day grace period and Plaintiff’s claim was ultimately paid.

9 Plaintiff’s FAC commences by urging that TLIC “refuses to comply with mandatory  
10 provisions of the California Insurance Code as well as California common law regulating the lapse  
11 and termination of individual and ‘group’ life insurance policies.” FAC, ¶1. It also vaguely alleges  
12 that TLIC misrepresented the terms and conditions of its grace periods, which caused injury to  
13 Plaintiff and others despite notices provided to Stowell. *Id.* ¶1, 10. After further introductory charging  
14 allegations concerning the purported failure to comply with the Statutes (which Plaintiff asserts apply  
15 in full to group policies), she alleges that Plaintiff, on behalf of herself and the purported class, “brings  
16 this action to recover for the injuries and damages resulting from these violations.” FAC, ¶11.<sup>2</sup>

17 **A. The Statutes**

18 Beginning at paragraph 21, the FAC addresses the “enactment and applicability” of the  
19 Statutes. Paragraph 20 advises that the California Legislature enacted the Statutes in 2012, and  
20 paragraph 25 states that the Statutes became effective January 1, 2013. While the FAC’s allegations  
21 reference purported protections of the Statutes extended to group policies and certificates of  
22 insurance, and that certificate holders were to be treated the same as individual policy owners and  
23 individuals with an interest in the Policy, these statements are not consistent with the language of the  
24 actual Statutes and Legislative history discussed below. FAC, ¶¶23, 31. Plaintiff also plays loose with  
25 the specific provisions and requirements of the Statutes, but paragraph 29 of the FAC quotes the  
26 Statutes verbatim:

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27  
28 <sup>2</sup> Footnote 1 advises that all references to Sections 10113.71 and/or 10113.72 are collectively referred  
to as the “Statutes.” TLIC uses the same convention in this motion.

1           **§ 10113.71 Grace Period; Notice of pending lapse and termination of**  
2 **policy; Mailing requirement**

3           (a) Every life insurance policy *issued or delivered in this state* shall  
4 contain a provision for a grace period of not less than 60 days from the  
5 premium due date. The 60-day grace period shall not run concurrently with  
6 the period of paid coverage. The provision shall provide that the policy shall  
7 remain in force during the grace period.

8           (b) (1) A notice of pending lapse and termination of a life insurance  
9 policy shall not be effective unless mailed by the insurer *to the named policy*  
10 *owner*, a designee named pursuant to Section 10113.72 for an *individual life*  
11 *insurance policy*, and a known assignee or other person having an interest in  
12 the *individual life insurance policy*, at least 30 days prior to the effective date  
13 of termination if termination is for nonpayment of premium.

14           (2) This subdivision shall not apply to nonrenewal.

15           (3) Notice shall be given to the policy owner and to the designee by  
16 first-class United States mail within 30 days after a premium is due and unpaid.  
17 However, notices made to assignees pursuant to this section may be done  
18 electronically with the consent of the assignee.

19           (c) For purposes of this section, a life insurance policy includes, but is  
20 not limited to, *an individual life insurance policy and a group life insurance*  
21 *policy*, except where otherwise provided.

22           **§ 10113.72 Right to designate person to receive notice of lapse or termination of**  
23 **policy for nonpayment of premium; Right to change designation; Notice of lapse or**  
24 **termination**

25           (a) An *individual life insurance policy* shall not be *issued or delivered*  
26 *in this state* until the applicant has been given the right to designate at least  
27 one person, in addition to the applicant to receive notice of lapse or  
28 termination of a policy for nonpayment of premium. The insurer shall provide  
each applicant with a form to make the designation. That form shall provide  
the opportunity for the applicant to submit the name, address, and telephone  
number of at least one person, in addition to the applicant, who is to receive  
notice of lapse or termination of the policy for nonpayment of premium.

          (b) The insurer shall notify *the policy owner* annually of the right to  
change the written designation or designate one or more persons. The *policy*  
*owner* may change the designation more often if he or she chooses to do so.

          (c) No *individual life insurance policy* shall lapse or be terminated for  
nonpayment of premium unless the insurer, at least 30 days prior to the  
effective date of the lapse or termination, gives notice to the *policy owner* and  
to the person or persons designated pursuant to subdivision (a), at the address  
provided by the *policy owner* for purposes of receiving notice of lapse or  
termination. Notice shall be given by first-class United States mail within 30  
days after a premium is due and unpaid.” (Emphasis added.)

          As can be seen by the emphasized text, both sections 10113.71 and 10113.72 commence with  
the Legislature’s language “issued or delivered in this state.” Just as significantly, the entirety of  
Section 10113.72 is only directed to an “individual life insurance policy” and the “policy owner.”  
There is no reference whatsoever to any “insured” under a group policy, let alone a “certificate holder”



1 under a group policy.

2 Well-established principles of statutory construction dictate that language must be construed  
3 in the context of the statute as a whole with each subsection harmonizing the other. *See Mendoza v.*  
4 *Nordstrom, Inc.*, 2 Cal.5th 1074, 1087 (2017); *McCarther v. Pacific Telesis Group*, 48 Cal.4th 104,  
5 110 (2010). Plaintiff’s argument that a certificate holder under a group policy issued outside  
6 California is covered by the Statutes contravenes a fundamental canon of statutory construction that  
7 the Legislature would not intend for one subsection of a statute to operate in a manner that is markedly  
8 dissimilar from another subsection in the same statute.

9 Additionally, while Section 10113.71 does state in subsection (c) that, for **this section**, a life  
10 insurance policy includes both an individual and a group life insurance policy, each and every  
11 provision in that section refers to the “policy owner” or a designee of an “individual” life insurance  
12 policy, and again there is no reference whatsoever to a “certificate holder” under a group policy or  
13 even any “insured” under such a policy. Moreover, under Section 10113.71(b)(1), only persons who  
14 have an interest in an **individual** life insurance policy are entitled to notice.

15 Plaintiff spends ample time in her FAC alleging that the certificate of insurance was issued or  
16 delivered in California (e.g., FAC, ¶¶40, 41), but this is irrelevant because issuance and delivery  
17 applies to the group policy. Plaintiff also cites other Insurance Code provisions or otherwise attempts  
18 to argue that the Certificate was individualized and therefore conveys status to Stowell as a policy  
19 owner or that the Certificate amounts to an individual policy or that Stowell was a person of interest  
20 under a non-existent individual policy, but as discussed below, none of these claims have merit and  
21 they are logically flawed, inconsistent with the language in the Statutes and the Legislative History.  
22 FAC, ¶¶4, 19, 23, 38, 41, 42, 52. Plaintiff also suggests that the Group Policy produced and the  
23 Certificate she attaches as Exhibit B should be the same, but this argument makes no sense as one is  
24 a Group Policy and the other is a Certificate of Insurance issued under a Group Policy. FAC, ¶48.

25 **B. The Alleged Facts Regarding Named Plaintiff and The Decedent**

26 The named Plaintiff brings this action “in her individual capacity and as the heir and  
27 successor-in-interest of the decedent and insured, Delaine Stowell, and on behalf of the Estate of  
28 Delaine Stowell,” and on behalf of the class and sub-class she seeks to represent and as is defined in

1 paragraph 69. FAC, caption page, ¶¶13, 69. Plaintiff is the daughter of decedent Stowell and the  
2 beneficiary of the life insurance policy under which Stowell was an insured. FAC, ¶¶12, 14. Plaintiff  
3 contends that Stowell died in California as a California resident on August 7, 2018 and inconsistently  
4 alleges that she was a California resident for her entire life. FAC, ¶14.<sup>3</sup> While Plaintiff concedes now  
5 that Stowell was covered under a group policy, Plaintiff contends that, in or about 1992, her mother  
6 Stowell purchased the subject life insurance from J.C. Penney Life Insurance Company (“JCP Life”),  
7 which “policy” which was later transitioned and underwritten by TLIC. FAC, ¶¶37, 39, 46. These  
8 allegations are inaccurate or at least confusing, as discussed below, since there was no “policy” issued  
9 to Stowell, just a certificate of insurance under a group life insurance policy issued to J. C. Penney  
10 Company, Inc. (“JCP Company”), which policy owner was located in Illinois. To attempt to fall  
11 within the “issued or delivered” trigger requirements set forth in the Statutes, Plaintiff refers to the  
12 Certificate and even the Policy having been purchased and “issued or delivered” in California, but  
13 that is false. FAC, ¶41.

14 The value of coverage is “\$12,000,” and the premium was \$16.12 per month,” Stowell  
15 allegedly paid the premiums for 26 years. FAC, ¶¶38, 43. TLIC allegedly did not provide Stowell  
16 with the right to designate another recipient of important policy notices, including a 30-day notice of  
17 any effective lapse or the right to a 60-day grace period, and otherwise concealed information from  
18 Plaintiff and Stowell. FAC, ¶¶51-55. TLIC allegedly attempted to lapse or terminate coverage in  
19 around July 2018. FAC, ¶55. Plaintiff claims neither she nor Stowell have any record of receiving  
20 any notices of any missed premium payments in 2018 or any impending lapse. *Id.*

21 As alleged previously, Stowell died in August 2018, with Plaintiff alleging that the “Policy”  
22 had “not been legally and effectively terminated and was in full force.” FAC, ¶56.<sup>4</sup> At some later  
23 unspecified point in time, Plaintiff submitted a claim to TLIC for the life insurance death benefits,  
24 and TLIC denied the claim due to nonpayment of premium. FAC, ¶57. Plaintiff then alleges multiple

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25 <sup>3</sup> Documents supplied in the declarations supporting this motion show that Stowell lived in  
26 Washington, not California, for some time. For purposes of this motion, these issues are not material.

27 <sup>4</sup> Due to the more than 60-day grace period provided to Stowell, the coverage had not in fact lapsed  
28 as of the date of her death, but due to a delay in Plaintiff submitting a claim to TLIC, a mistake was  
made by TLIC in recognizing this fact. TLIC rectified this mistake and is making full payment of the  
life insurance death benefits and accrued interest to Plaintiff, as set forth in the attached Declaration  
of Darlene Edwards (“Edwards Decl.”), ¶10.

1 violations of the Statutes and fraudulent misrepresentations regarding the alleged grace period both  
2 prior to and after Stowell's death. FAC, ¶¶58, 60-63.

3 **C. The Claims for Relief Alleged in This Action**

4 Following the allegations concerning Plaintiff and her decedent mother, the FAC sets forth its  
5 class action allegations arising out of the purported failures of TLIC to comply with the Statutes,  
6 which became effective January 1, 2013. FAC, ¶¶64-81. Thereafter, the FAC – again based solely on  
7 reliance on the purported violation of the Statutes and/or their application – brings claims by Plaintiff  
8 and the purported class and sub-class for declaratory relief (two virtually identical but separate claims,  
9 one under state law and one under federal law), breach of contract, violation of California Business  
10 & Professions Code §§ 17200 *et seq.* and for financial elder abuse. FAC, ¶¶82-126. While TLIC  
11 contends that the plain language used by the California Legislature in the Statutes, and under well-  
12 established principles of statutory construction, does not apply to policies issued before their January  
13 1, 2013 effective date, TLIC is not challenging at this point whether the Statutes apply to policies  
14 issued or delivered in California prior to January 1, 2013. TLIC is only challenging Plaintiff's ability  
15 to state a claim with respect to the certificate of insurance issued to her under a group life insurance  
16 policy issued and delivered in Illinois to JCP Company as the policy owner.

17 **III. THERE WAS NO "POLICY" ISSUED TO STOWELL AND THE GROUP POLICY**  
18 **WAS ISSUED AND DELIVERED TO JCP COMPANY OUTSIDE OF CALIFORNIA**

19 The actual facts – established through documents referenced in the FAC and public records  
20 of which the Court may take judicial notice – supports TLIC's conclusion that Stowell was covered  
21 under a group life insurance policy that was issued and delivered in a state other than California.  
22 Thus, Plaintiff – in either capacity asserted in the FAC – does not fall within the Statutes.

23 In 1991, JCP Company, a Delaware corporation located in Schaumburg, Illinois, applied for  
24 a group life insurance policy from JCP Life. JCP Life issued and delivered Group Policy No. 25222  
25 ("Group Policy") to JCP Company in the State of Illinois. JCP Company was identified on the first  
26 page of the Group Policy as the "Policyholder." *See* Edwards Decl., ¶3, Ex. 1 (Group Policy including  
27  
28

1 the Application attached thereto); Request for Judicial Notice (“RJN”), Ex. 1.<sup>5</sup> JCP Life was  
2 incorporated in Vermont, maintained its home office in Rutland, Vermont, and its administrative  
3 offices were located in Plano, Texas. *See* Smith Decl., ¶3.

4 Under the terms of the Group Policy, at page 2, individuals age 30 to 75 who are credit card  
5 holders with JCP Company or their spouses could enroll in the group life insurance coverage by  
6 completing an enrollment form and agreeing to a monthly premium charge and be would be issued a  
7 Certificate of Insurance evidencing enrollment under the Group Policy and Plan. *See* Edwards Decl.,  
8 ¶¶3, 4 and Ex. 1; RJN, Ex. 1.

9 On or about May 7, 1992, Stowell submitted to JCP Life an Enrollment Form for her  
10 enrollment as an insured under the Group Policy. The Enrollment Form reflects that the benefits  
11 amount is \$12,000 with a monthly premium of \$16.12. The Enrollment Form further states that it is  
12 for enrollment in the Group Whole Life Insurance Plan offered by JCP Life and that the Plan is for  
13 “eligible JC Penney cardholders.” Edwards Decl., ¶5, Ex. 2; RJN, Ex. 1. A Certificate of Insurance,  
14 No. 74LB810725 (the “Certificate”), evidencing enrollment in the Plan was issued to Stowell,  
15 effective May 20, 1992. *See* Edwards Decl., ¶5 and Ex. 8; RJN, Ex. 8.

16 On or about June 13, 1993, Stowell submitted an Enrollment Form for Additional Benefits to  
17 JCP Life to obtain \$25,000 in accidental death benefits at a cost of \$3.25 per month under the Group  
18 Policy. *See* Edwards Decl., ¶6, Ex. 3; RJN, Ex. 3. A Group Accidental Death Benefit Rider was added  
19 to her Certificate on June 20, 1993. *See* Edwards Decl., ¶6, Ex. 8; RJN, Ex. 8.

20 Subsequently, on January 25, 2002, JCP Company legally changed its name to its current  
21 name of J.C. Penney Corporation, Inc. (“JCP Corp.”). *See* Edwards Decl., ¶7, Ex. 4; RJN, Ex. 4. Other  
22 than changing the name of the Group Policy Holder to JCP Corp., this name change did not impact  
23

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24 <sup>5</sup> As discussed in detail in TLIC’s concurrently filed RJN, a “court may judicially notice a fact that is  
25 not subject to reasonable dispute because it . . . can be accurately and readily determined from sources  
26 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). The authenticity of each of  
27 the Exhibits attached to the Edwards Declaration and the Declaration of Elizabeth Smith (“Smith  
28 Decl.”) meet this standard. Further, Judicial Notice of Exhibits 1, 2, 3, 7, 8 and 10 is appropriate under  
the incorporation by reference doctrine because the Plaintiff refers to the documents in the FAC and  
they are central to Plaintiff’s claim under the Statutes. *Marder v. Lopez*, 450 F. 3d 445, 448 (9th Cir.  
2006). Likewise, judicial notice of Exhibits 4-6 and 9 and their contents is proper as documents  
required to be filed by law with governmental Secretary of State Offices. *See, e.g., Gerritsen v.*  
*Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015).

1 the Group Policy or the Plan under which Stowell was enrolled. *See* Edwards Decl., ¶7.

2 On May 7, 2002, JCP Life changed its name to Stonebridge Life Insurance Company  
3 (“Stonebridge Life”). *See* Smith Decl., ¶4, Ex. 5; RJN, Ex. 5. Again, there was no change to the Group  
4 Policy other than the Plan insurer being renamed and this name change did not impact the Group  
5 Policy or the Plan under which Stowell was enrolled. *See* Edwards Decl., ¶8. As with JCP Life,  
6 Stonebridge Life was incorporated in Vermont with its administrative offices located in Plano, Texas.  
7 *See* Smith Decl., ¶4.

8 On October 1, 2015, Stonebridge Life legally merged into TLIC. *See* Smith Decl., ¶5, Ex. 6;  
9 RJN, Ex. 6. A Merger Endorsement for the Certificate that was sent to Stowell on January 5, 2016.  
10 *See* Edwards Decl., ¶9, Ex. 7; RJN, Ex. 7. Again, there was no change to the Group Policy as a result  
11 of the merger other than the Plan insurer being renamed, and this name change did not otherwise  
12 impact the Group Policy or the Plan under which Stowell was enrolled. *See* Edwards Decl., ¶9. The  
13 Group Certificate in effect and issued to Stowell was provided to her, and at all times that coverage  
14 was in effect, Stowell was insured under Group Policy No. 25222 and enrolled in the Group Plan and  
15 that did not change despite various corporate name changes. *See id.*, ¶9, Ex. 8; RJN, Ex. 8. TLIC is  
16 and at all times was incorporated in Iowa with its principal place of business located in Cedar Rapids,  
17 Iowa. *See* Smith Decl., ¶6, Exs. 6, 9; RJN, Exs. 6, 9.

18 Stowell allegedly died on August 7, 2018. FAC, ¶56. The coverage under the Certificate  
19 issued to Stowell had been paid through June 19, 2018. *See* Edwards Decl., ¶10. Despite the Grace  
20 Period stated in the Certificate being 31 days, it was TLIC’s practice to provide enrollees with a 60  
21 day grace period for this particular Plan/Group Policy. *See id.* A Billing Summary Statement dated  
22 July 25, 2018 reflected the extended ability to pay the premiums to maintain the Certificate. *See*  
23 Edwards Decl., ¶10, Ex. 10; RJN, Ex. 10. Thus, the Certificate issued to Stowell was still in effect  
24 (given the extended grace period) at the time of her death. Due to, among other things, Plaintiff’s  
25 delay in submission of the claim for benefits (claim submitted in December 2018 well after the August  
26 2018 initial phone notice that Stowell had allegedly died), TLIC’s system showed the Certificate in a  
27 lapsed status when Plaintiff claim documents finally were received, and TLIC mistakenly denied the  
28 claim. When TLIC discovered this mistake while reviewing its records in connection with this

lawsuit, TLIC promptly notified Plaintiff's counsel and is paying the claim. *See* Edwards Decl., ¶10.

**IV. LEGAL STANDARD FOR MOTIONS TO DISMISS**

In deciding a motion to dismiss under Rule 12(b)(6), the court need not accept as true allegations contradicted by an exhibit to the complaint. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Documents referenced in a complaint may be considered on a motion to dismiss, even if not attached, if they are “central” to the claims. *Marder v. Lopez*, 450 F. 3d 445, 448 (9th Cir. 2006). The Court need not accept allegations that contradict exhibits attached to the complaint or central to it. *Daniel-Hall v. Nat’l Educ. Assn.*, 629 F. 3d 992, 998 (9th Cir. 2010). The court may also consider matters subject to judicial notice. *Reese v. Malone*, 747 F.3d 557, 568-69 (9th Cir. 2014). Dismissal is proper where there is either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal claim. *Hinds Invs., L.P. v. Angioli*, 654 F.3d 846, 850 (9th Cir. 2011).

**V. THE STATUTES DO NOT APPLY TO THE GROUP LIFE INSURANCE POLICY BECAUSE IT WAS ISSUED AND DELIVERED OUTSIDE OF CALIFORNIA**

Group life insurance is life insurance that is purchased under a single contract issued to an entity covering a group of people – in the case here, JCP Company credit cardholders. *See, e.g., Heighley v. J.C. Penney Life Ins. Co.*, 257 F. Supp. 2d 1241, 1246-47, 1251 (C.D. Cal. 2003); Edwards Decl., ¶3, Ex. 1 (Provisions-Eligibility); RJN, Ex. 1. The policy owner is issued a group life policy and it covers eligible members of the group who enroll. *Id.* (here, JCP Company was the policy owner who was issued the Group Policy). Each person who enrolls in turn received a Certificate of Insurance. *See* Edwards Decl., ¶3, Ex. 1 (at p. 1 of Group Policy and p. 2 “When a Person Becomes an Insured”); RJN, Ex. 1; *Heighley*, 257 F. Supp. 2d at 1246-47. In contrast to individual policies, completion of a simple enrollment form guarantees enrollment of eligible persons. *Id.* The Certificate of Insurance at issue in this case states that the insured member of the group is covered under the Group Policy held by JCP Corp. *See* Edwards Decl., Ex. 8 (at p. 1 of Certificate); RJN, Ex. 8; FAC, Ex. B. The Certificate of Insurance serves as proof of insurance, ***but it is not the actual insurance policy.*** *Id.* at p. 3 (“Entire Contract”).

Plaintiff's FAC is premised on her claim that TLIC allegedly violated the Statutes by failing

1 to provide a 60-day grace period, a 30-day notice of pending lapse and an annual right to designate a  
2 third party to receive notice of lapse. She seeks to certify a class of **owners** as well as **certificate**  
3 **holders** or **individuals with an interest in the policy** or beneficiaries of TLIC life insurance policies  
4 in force on or after January 1, 2013 and governed by the Statutes where TLIC did not allegedly comply  
5 with the Statutes prior to lapse, termination or reinstatement. FAC, ¶69. TLIC contends that the  
6 Statutes apply only as to certain policies issued or delivered in California on or after January 1, 2013  
7 (the effective date of the Statutes). Resolving that issue, which is now being addressed by numerous  
8 other courts, is not, however, the one presented by this motion.<sup>6</sup>

9 But even if the Statutes applied to life insurance policies issued or delivered prior to January  
10 1, 2013 (as Plaintiff alleges), the Statutes only apply to policies “issued or delivered” **in California**.  
11 FAC, ¶29. Here, the Group Policy was issued and delivered to the policy owner (JCP Company) in  
12 Illinois. *See* Edwards Decl., ¶3, Ex. 1; RJN, Ex. 1. Further, the plain and clear language of Section  
13 10113.71’s lapse notice requirements apply only in the context of group insurance with respect to  
14 notice to the named **policy owner** (not the insured, not a certificate holder and not a person with an  
15 interest). Moreover, the plain and clear language of Section 10113.72 applies **exclusively** to individual  
16 life insurance policies and thus is totally inapplicable to group policies. Plaintiff’s FAC offers no  
17 basis to extend the mandates of the Statutes to group policies. Such an extension would be inconsistent

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18 <sup>6</sup> TLIC’s position that the Statutes do not apply to life insurance policies issued and delivered prior  
19 to January 1, 2013 is supported not only by the statutory language but also by several recent  
20 decisions. *See, e.g., McHugh v. Protective Life Insurance Company*, 40 Cal. App. 5th 1166, 1177  
21 (2019), presently pending on appeal before the California Supreme Court, Case No. S259215  
22 (finding that McHugh’s life insurance policy is governed by the regulations in effect when it was  
23 issued in 2005, and the subsequently enacted sections 10113.71 and 10113.72 are not incorporated  
24 into the policy), and *Shaff v. Farmers New World Life Insurance Company*, Central District of  
25 California, Case No. 17-CV-03610 JAK, appealed to and pending in the Ninth Circuit, No. 19-  
26 56129 (District Court held that the Statutes are not retroactive and did not apply to the policy issued  
27 pre-January 1, 2013). While other cases have similarly concluded that the Statutes are not  
28 retroactive, they have applied a so-called “renewal principle” to the Statutes to force policies issued  
prior to January 1, 2013 to comply with the obligations set forth in the Statutes – despite the  
statutory language demonstrating no retroactive intent and clearly no mention of this so-called  
“renewal principle” or even the word “renewal” in the Statutes. These cases are also on appeal. *See*  
*Bentley v. United of Omaha Life Insurance Company*, Central District of California, Case No. 2:15-  
cv-07870-DMG-AJW, Ninth Circuit, No. 20-55435; followed by *Thomas v. State Farm Ins. Co.*,  
Southern District of California, Case No. 18-CV-0728 BAS BGS, Ninth Circuit, No. 20-55231.  
TLIC contends that both *Bentley* and *Thomas* are wrongly decided. As discussed herein, the Court  
need not decide this issue here because, unlike the individual policies issued in California in those  
cases, the Statutes cannot apply here because this case involves a group policy issued and delivered  
in Illinois.

1 with sound public policy by imposing undue costs and burdens on non-California group plans.

2       Additionally, the Statutes' lack of any use of the term "certificate" as issued to an insured  
3 under a group life insurance policy only further demonstrates that the Statutes are not meant to apply  
4 to certificate holders under such a group policy, but rather only to the group policyholder as discussed  
5 above. That is the manner in which the Statutes should be interpreted. *See Coburn v. Sievert*, 133 Cal.  
6 App. 4th 1483, 1496 (2005) ("We presume the Legislature meant what it said and the plain meaning  
7 of the statute governs."). In fact, the California Insurance Code is replete with statutes that distinguish  
8 between certificates of insurance, on the one hand, and the group policyholder, on the other hand.  
9 *See, e.g.*, California Insurance Code, §§786, 10209.1, 10113.4, 10112.5. For example, in section 786,  
10 involving the sale of disability and life insurance to seniors, commences as follows:

11               "All individual and group disability insurance policies and certificates, and all  
12 **group life insurance policies and certificates** offered for sale to individuals age  
13 65 or older in California shall provide an examination period of 30 days after the  
14 receipt of the **policy or certificate** for purposes of review of the contract. If the  
15 **policyholder or certificate holder** chooses to cancel the **policy or certificate** and  
16 returns the **policy or certificate** for cancellation, by mail or other delivery  
method, within the 30-day examination period, the return shall void the **policy or**  
**certificate** from the beginning, and the parties shall be in the same position as if  
a **policy or certificate** had not been issued. All premiums paid and any policy or  
membership fee paid shall be fully refunded to the **policyholder or certificate**  
**holder** by the insurer or entity in a timely manner." (Emphasis added.)

17       As can be seen by the bolded text, Section 786 repeatedly distinguishes between policies and  
18 certificates and between policyholders and certificate holders. The Statutes in the present case do not  
19 discuss certificates or certificate holders, and their provisions only apply to individual policies, with  
20 the sole portion that applies to group policies only referencing "[e]ach life insurance policy," not any  
21 certificate, and then only life insurance policies issued in the State of California.

22       Plaintiff's Breach of Contract, Unfair Competition and Elder Abuse claims, which all rely  
23 upon the application of and TLIC's purported violation of the Statutes, necessarily fail as a matter of  
24 law. Additionally, Plaintiff's twin Declaratory Relief claims similarly are based on the Statutes and  
25 the claims set forth above. Thus, they too fail as well.

26 **VI. THE LEGISLATIVE HISTORY OF THE STATUTES FURTHER CONFIRMS**  
27 **THEIR INAPPLICABILITY TO THE GROUP LIFE POLICY**

28       As addressed above, with two exceptions, the Statutes only apply to individual policies, not



group policies. First, the 60-day grace period is applicable to group life insurance policies under Section 10113.71(a), based on the language in Section 10113.71(c) that a life insurance policy for this section includes “a group life insurance policy, except where otherwise provided.” Of course, that language is couched in the context of life insurance policies “issued or delivered in this state,” not a policy issued in Illinois. Second, Section 10113.71(b), concerning the 30-day notice of pending lapse, explicitly references such notice going to the *policy owner* or a designee or person with an interest “for an individual life insurance policy,” and that provision cannot apply to a person like Plaintiff seeking benefits under a certificate of insurance issued under a group life insurance policy

The legislative history, which TLIC supplies with this motion, further demonstrates that there is no obligation to provide any 30-day lapse notice with respect to certificate holders under group policies.<sup>7</sup> Under the legislative history, Section 10113.71(b), prior to its amendment on June 19, 2012, stated as follows:

(b) (1) A notice of pending lapse and termination of a life insurance policy shall not be effective unless mailed by the insurer to the named insured, a designee named pursuant to Section 10113.72, and a known assignee or other person having an interest in the policy, at least 30 days prior to the effective date of termination if termination is for nonpayment of premium.

\* \* \*

(3) Notice shall be given to the insured and to the designee by first-class United States mail within 30 days after a premium is due and unpaid. However, notices made to assignees pursuant to this section may be done electronically with consent of the assignee. LH 016.

However, on June 19, 2012, the Legislature amended that section to replace “named insured” (in subsection (1)) and “insured” (in subsection (3)) with “policy owner”:

(b) (1) A notice of pending lapse and termination of a life insurance policy shall not be effective unless mailed by the insurer to the ~~named insured~~ *policy owner*, a designee named pursuant to Section 10113.72, and a known assignee or other person having an interest in the policy, at least 30 days prior to the effective date of termination if termination is for nonpayment of premium.

(3) Notice shall be given to the ~~insured~~ *policy owner* and to the designee by first-class United States mail within 30 days after a premium is due and unpaid. (Emphasis and stricken text by Legislature.) LH 020

By doing so, the Legislature deleted any potential argument that a named insured (or an insured) was

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<sup>7</sup> A true copy of the Statutes’ legislative history is attached to the accompanying Declaration of Heather Thomas. TLIC asks that the Court take judicial notice of the legislative history. The pages referenced below refer to the Bates numbered pages in the Thomas declaration, denoted “LH \_\_\_\_.”

entitled to such notice, as opposed to the *policy owner*, and in the case of a group life insurance policy, the policy owner is not the certificate holder.

Then, in the final amendment to the Statutes, made August 14, 2012, the Legislature emphasized that the 30-day notice for designees identified pursuant to Section 10113.72 only applied to *individual* policies, and not group policies:

(b) (1) A notice of pending lapse and termination of a life insurance policy shall not be effective unless mailed by the insurer to the named policy owner, a designee named pursuant to Section 10113.72 *for an individual life insurance policy*, and a known assignee or other person having an interest in the individual life insurance policy, at least 30 days prior to the effective date of termination if termination is for nonpayment of premium. (Emphasis by Legislature.) LH 024.

Both the Senate and Assembly confirmed in reports subsequently made part of the legislative history that the August 14, 2002 amendment *removed group life policies from the ambit of section 10113.72*, such that the provision only applied to individual life insurance policies:

Senate Floor Amendments of 8/14/12 clarify that the requirement that the insurer send a notice of pending lapse and termination of a life insurance policy for nonpayment of premium *applies to individual, and not group, life insurance policies*. [Senate Rules Committee, August 15, 2012] (Emphasis added.) LH 122

2) Requires insurers to mail a notice of pending lapse and termination at least 30 days prior to the termination *of an individual life insurance policy* for nonpayment of premium. [Assembly Concurrence in Senate Amendments] (Emphasis added.) LH 162.

Accordingly, to the extent there were any doubt from a plain reading of the Statutes that they only apply to individual policies, the legislative history only drives home this point. The sole remnant of the Statutes applying to group policies after the final amendment before the Statutes were passed by the Legislature is the 60-day grace period, but again that only applies to group policies issued or delivered in California, unlike the group policy issued to JCP Company in Illinois and under which Plaintiff alleges her claims.

**VII. PLAINTIFF'S RESORT TO INAPPLICABLE INSURANCE CODE PROVISIONS AND ARGUMENTS DIVORCED FROM THE PLAIN LANGUAGE OF THE STATUTES CANNOT ELEVATE A CERTIFICATE OF INSURANCE TO AN INDIVIDUAL OR GROUP POLICY**

As discussed above, once TLIC moved to dismiss the original complaint – which failed to

1 acknowledge that Plaintiff's claim was based upon a certificate of insurance issued under a group  
2 policy – Plaintiff chose not to even oppose the motion, but “reworked” her pleading to allege a  
3 convoluted mess of allegations seeking to equate the well-known insurance concept of a certificate  
4 of insurance with equally established concepts of individual and group life insurance policies. Not  
5 only is the argument virtually nonsensical, but it strains beyond all reason the plain language of the  
6 Statutes, which only apply to individual life insurance policies and, in one instance, group life  
7 insurance policies, but only with respect to *the owner* of such a policy, not any certificate holder. Not  
8 one of the panoply of Insurance Code sections tossed into the FAC have any relevancy whatsoever to  
9 the interpretation of the Statutes. They should be ignored and this motion granted.

10 For example, Plaintiff references Insurance Code §§ 41 and 42 (FAC, ¶¶4, 19),<sup>8</sup> which are  
11 mere introductory provisions of the Code, but neither define what a “group policy” is or state that a  
12 certificate issued under a group policy has the same meaning as a group policy, let alone an individual  
13 policy. Even more nonsensical is Plaintiff's citation to section 106 (FAC, ¶38), which is the definition  
14 of disability insurance, a concept completely immaterial to the life insurance at issue in this case, the  
15 definition of which is found in section 101, which is not even cited by Plaintiff.<sup>9</sup>

16 Continuing to ignore the plain language of the Statutes – which say not one word about  
17 certificates of insurance – Plaintiff moves to a separate chapter of the Code dealing with group life  
18 policies, §§ 10200, *et seq.* (FAC, ¶¶41, 42). To the extent these sections address “certificates of  
19 insurance,” *e.g.*, section 10209, there is nothing whatsoever in them that seeks to equate a certificate  
20 with a group life insurance policy. Even more strained is the resort to section 10209.1, which states  
21 that an individual certificate is to be “individualized,” which merely means that it has to have “the  
22 name of the employee or some other means of identifying to the employee covered that it is his  
23 individual certificate.” Again, this is completely irrelevant to the Statutes, let alone the express

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24  
25 <sup>8</sup> Section 41: “All insurance in this State is governed by the provisions of this code.” Section 42: “The  
26 designation of insurance coverage as ‘group’ in any code or law of this state other than this code does  
27 not authorize its representation as a group coverage or as a group policy, certificate, or contract by  
any person licensed or certificated by the commissioner unless the policy providing the coverage is  
defined as group insurance by a specific provision of this code or of the laws of the state in which the  
policy, certificate, or contract is issued.”

28 <sup>9</sup> Plaintiff references section 106 in connection with the additional accidental benefit coverage under  
the group life insurance policy, but there is no allegation Ms. Stowell died due to any accident.

1 language of section 10113.71 that only applies to individual or group *policies* issued or delivered in  
2 California, not certificates issued or delivered in California.<sup>10</sup>

3 Finally, citing section 10209.3, which allows a person insured under a group life insurance  
4 policy to assign ownership rights to another person (assuming there were to be in agreement among  
5 the insured, insurer and policyholder), Plaintiff urges that Stowell possessed ownership rights that,  
6 again in a completely unsupported and convoluted fashion, somehow bring her certificate within the  
7 scope of the Statutes. (FAC, ¶42.) Not only is there no allegation that any such agreement or  
8 assignment was made, but this section, like all the other sections cited by Plaintiff, says nothing about  
9 providing a certificate holder with any ownership interest *in the group policy*. And it cannot be  
10 emphasized enough that the Statutes do not refer to certificates of insurance, and the group policy still  
11 needs to be issued and or delivered in California.

12 At bottom, no matter how many Insurance Code provisions are thrown out to see what will  
13 stick, the only relevant statutes, sections 10113.71 and 10113.72, do not apply here because the group  
14 policy was not issued or delivered in California, and the only portion of the Statutes that even cover  
15 group policies are not directed to certificate holders, but solely to the group policy owner.

16 Plaintiff's new misrepresentation theory which she seeks to support some of her claims, is  
17 likewise fundamentally flawed because, among other things, it is dependent on the Statutes and is  
18 also contradicted by the notices sent to Stowell that provided more than a 60-day period to pay.

19 **VIII. CONCLUSION**

20 For the foregoing reasons, TLIC respectfully requests that the Court with prejudice the FAC.

21 DATED: June 19, 2020

HINSHAW & CULBERTSON LLP

22 By: /s/ Vivian I. Orlando

Larry M. Golub

23 Vivian I. Orlando

24 Attorneys for Defendant TRANSAMERICA  
LIFE INSURANCE COMPANY

25  
26 <sup>10</sup> One of the provisions cited by plaintiff, section 10205, in discussing the filing of group policy  
27 forms, expressly distinguishes between the group policy itself and certificates of insurance issued  
28 thereunder. In a formal opinion issued by the California Attorney General, 1964 Cal. AG LEXIS 19,  
\*9, 44 Ops. Cal. Atty. Gen. 55, 58, the Attorney General concluded that the "delivery of the certificate  
to borrowers in California does not mean that the policy, or any part thereof, was issued or delivered  
in California in violation of California Insurance Code section 10205."